

“Unacceptable delay” in Article 2 compliance

The Parliamentary Joint Committee on Human Rights has branded as an “unacceptable” delay in the implementation of a number of judgements by the European Court of Human Rights relating to dealing with the past in Northern Ireland. The joint House of Commons and House of Lords Committee, which has a remit to consider human rights issues, notes in a recent report that the record of the UK Government in implementing European Court decisions is generally good, but that this group of cases, in which judgement was given in 2001, stands out as a matter of concern. The Court in The McKerr group of cases found a significant number of violations of the procedural obligation under article 2 ECHR (the right to life) to conduct an effective investigation into such deaths.

The belated and inadequate “package of measures” that the UK Government adopted in response to these judgements has been afflicted with delay, obstruction and limited powers and CAJ has called the failures the “Apparatus of Impunity” (access the detailed report on CAJ’s website). The Joint Committee says: “The processes established to provide the effective investigations which Article 2 ECHR requires, through the institutions of the Police Ombudsman and the HET, have been beset with difficulties and have also been the subject of critical independent reviews which have called into question their compliance with the requirements of Article 2.”

In that light, the Committee welcomes the commitments of the Stormont House Agreement but expresses concern that the Legacy Investigation Branch (LIB) established by the PSNI pending the full implementation of the Stormont House Agreement is not Article 2 compliant. Commenting on the LIB, a replacement for the heavily-criticised Historical Enquiry Team, the Committee says: “...the Legacy Investigations Branch cannot itself satisfy the requirements of Article 2 ECHR because of its lack of independence from the police service.” It goes on to say: “We recommend that the legislation establishing the Historical Investigations Unit be treated as an urgent priority by the new Government...”

In fact, as reported in the last issue of Just News, preparations for legislation are moving ahead with some speed and CAJ’s work on “shadow” draft legislation, in cooperation with QUB and Ulster University academics, is keeping pace. Preliminary results from this work will be aired at a major conference on 18th May (see notice on page 7 of this issue). In the meantime, it is vital that political uncertainties are not allowed to disrupt the process and that draft legislation is published by June of this year. It is also important that the PSNI restricts the role of the LIB and does not attempt to pre-empt the work of the Historical Investigation Unit to be established consequent on the Stormont House Agreement. It would be a disaster if a flawed body, incapable of meeting Article 2 requirements, was in some way imported into the new institution.

The Stormont House Agreement represents a major opportunity; if the legislation is article 2 compliant, we could have a number of inter-connected mechanisms which together could go a long way towards dealing with the legacy of our troubled past. Just as important, the UK Government could finally meet its obligations as laid down by the European Court and “apparatus of impunity” be consigned to the waste bin of history.

Contents

“Unacceptable delay” in Article 2 compliance	1
Memorialization and Oral History in Divided Societies	2
Cutswatch	3
Will Gay Love Conquer All?	4
The Marriage Equality Referendum	
Abortion Law Reform	5
Seminar on the Equality implications of ‘Austerity’ following the SHA	6
Upcoming Stormont House Agreement Conference Monday 18 May	7
Civil Liberties Diary	8

Memorialization and Oral History in Divided Societies

Practitioners in the fields of oral history, memory studies, transitional justice, and peace and conflict studies have become increasingly aware of the potential role that oral history can play in documenting change, conflict and post-conflict reconciliation processes. The principle focal points of using oral history in this manner are in (1) giving status to suppressed voices that have little or no access to traditional forums, and (2) using the products of oral history processes to understand the nature of conflict and change over time. For instance, oral histories can be used to analyze patterns as they emerge in narrative form, probe silences, and track the production of stories, rituals and performances into historical memory.

There are many differing forms of commemoration currently common in divided societies. For instance, political groupings, ex-combatants, victim groups, community organizations and government are all involved to varying degrees in the commemoration 'industry' in Northern Ireland. This commemorative activity takes various forms including marches, parades, street theatre, re-enactment, vigils, religious services, sporting events, exhibitions, and artistic installations. The gathering, recording and archiving of oral histories has been taking place for some time, and is a continually growing field of commemoration. The resulting oral history archives can therefore be used to contextualize the construction of memory alongside the various forms of commemoration outlined above.

As access to digital technology becomes widespread across the globe, the collection, preservation and dissemination of oral histories is becoming more common and professionalized. Anyone with a smartphone can now easily record an interview in high digital quality, store it safely and share it with the world via the Internet. Given the ease of access and existence of a ready distribution network, it is important to consider some of the ethical issues around conducting, archiving and disseminating oral history interviews in post-conflict zones. The information presented here is a very basic introduction to best practice in the field. For more comprehensive guide, readers should consult Mary Marshall Clark et al, *Documenting and Interpreting Conflict through Oral History: A working guide* (Columbia University Center for Oral History, 2013).

Defining the research goals and the nature of the conflict or post-conflict situation are essential in preparing for an oral history project of this kind. How might the political situation impact on what is spoken or left unspoken by interviewees? Are people afraid to speak about certain topics? Do societal norms have an impact on what is an 'acceptable' opinion to express?

Ethical concerns should be paramount in oral history collection, but the importance of this is compounded in conflicted or divided societies. The attainment of informed written consent is essential. This includes explaining all the risks involved before an interview is conducted. The emotional wellbeing of interviewees is also to be addressed. Having a plan to ensure support is available is good practice in this regard. Interviewers should consider the risks to themselves before embarking on a project of this kind. The rights to the content held by interviewer, interviewee and organization should also be fully outlined and agreed before the content is archived or disseminated.

Adrian Grant

Cutswatch

At least 450 jobs are likely to be lost in the next few weeks from voluntary and community organisations right across Northern Ireland as government cuts are announced. The cuts cover a enormous range of community and voluntary groups including arts, environment, young people, justice and early years.

Based on current experience across the voluntary and community sector NICVA believes that voluntary and community organisations are being cut unfairly and disproportionately. This is, at least in part, as a result of services provided by organisations being viewed by departments as a quick and easy financial fix. Grants are regarded as discretionary and can be stopped with little notice period and no staffing or redundancy implications for the government department. Little or no thought is given to the quality of services provided by the voluntary and community sector or what the impact will be of these services ceasing to exist.

Added to this Ministers are not looking beyond their own departmental portfolio. Decisions are being made within departmental silos and no account is taken of the devastating cumulative impact on organisations that are affected by cuts from more than one department. This point was made by NICVA in recent meetings with the First and Deputy First Minister who have appointed the Junior Ministers to assess the situation across departments for its cumulative impact and liaising with NICVA and the sector on the issue.

NICVA also believe that cuts being made by departments are in contradiction to NI Executive policy, as laid out in the current Programme for Government and they will also make implementing policy and achieving targets even harder in the near future. Through our cutswatch survey NICVA has been collecting information on cuts across the voluntary and community sector. Whilst we are still collecting information clear trends have already started to emerge.

1. Children and young people are the service users most affected by cuts

Whilst the organisations who have responded to our survey come from across the voluntary and community sector it has become apparent that those most affected by cuts are those working with children and young people, involved in health and social care, education and employment and training.

2. In the voluntary and community sector funding cuts lead directly to job losses and in some cases, closure.

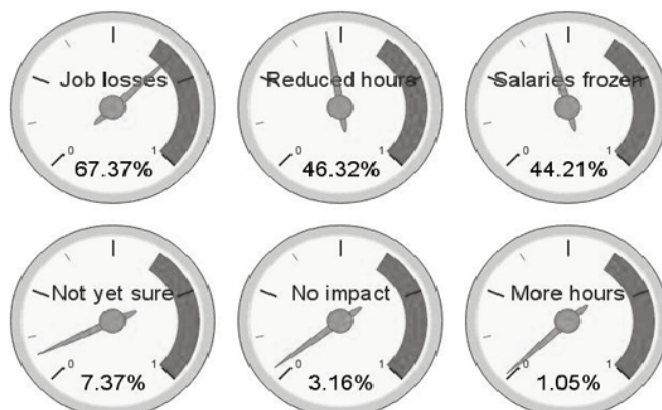
Our survey has shown that 70% of the organisations who have responded have had job losses, 43% have staff on reduced hours and 41% have frozen salaries.

3. Cuts passed on to organisations are not proportionate to budget cuts faced by departments

The cuts in budget passed to Departments are often in no way evenly distributed to funded organisations. The charge of disproportionate cuts is typified by the Department of the Environment cutting its National Heritage Grants by 100% with a range of organisations being told they will have some funding for three months but nothing after that. Whilst NICVA encouraged departments against taking a 'salami slicing' approach to their budgets this is a clear example of the sector bearing the brunt of a cut when the overall cut to the Department's budget was 10%.

NICVA is asking organisations to contact them and to fill out a cutswatch survey on the NICVA website. (<http://www.nicva.org/article/cutswatchni-report-your-cuts>) The more data and information we have the stronger the case we can put to the Junior Ministers.

Jenna Maghie, NICVA



Will Gay Love Conquer All? The Marriage Equality Referendum

Gay rights in the Republic of Ireland have come a long way since homosexuality was belatedly decriminalised in 1993. It had taken an unsuccessful challenge by Senator David Norris in the Irish Supreme Court and a hard fought case in the European Court of Human Rights to get the law changed then. Now on 22nd May next the electorate in the Republic will vote on whether to include in the Irish Constitution a right for lesbian and gay couples to marry. If the proposal is carried, Ireland will be the first state to incorporate such a right in its Constitution. And it looks very likely that it will be approved.

There has been an extraordinary change in attitudes since the time of the Norris case. Civil partnerships were introduced in 2011 with very little opposition and now all the major parties: the Fine Gael-Labour coalition, Fianna Fail and Sinn Fein, are actively supporting the referendum. Since the campaign began the Fine Gael Health Minister, Leo Varadkar, has come out as gay, followed by former Fianna Fail Minister Pat Carey, several TDs and a host of celebrities from the media, arts and sporting worlds. Even the Garda Representative Association has called for a 'Yes' vote.

The Catholic church has opposed the referendum but so far its opposition has been low-key and it has been left to fringe conservative Catholic groups like the Iona Institute and 'Mothers and Fathers Matter' to make the running.

But perhaps the most powerful intervention in the debate has come from former President Mary McAleese, who, with her husband Martin, described the Marriage Equality referendum as a human rights issue and called for a 'Yes' vote. The former President spoke movingly about the trauma suffered by gay children and young people in a society where they were officially regarded as lesser beings whose loving relationships were not regarded as equal to their heterosexual contemporaries. Her comments were made more poignant a few days later when her son Justin spoke out about the personal anxiety and pain he had experienced over coming out to his friends and acquaintances as a gay man.

Mary McAleese is well known as a committed Catholic and is widely popular in middle Ireland. She could not be dismissed as anti-religious or a trendy Dublin secularist and the 'No' campaign has had difficulty responding to her comments. Their arguments have seemed increasingly threadbare as the campaign has gone on. They adopted the slogan that every child deserves a mother and a father and suggested that children brought up without a father were more likely to be disadvantaged or get involved in crime. But this caused outrage from single mothers around the state who felt it was a slur on their ability to raise their children properly.

Lawyers supporting the 'Yes' side also pointed out that many lesbian and gay couples already have children and marriage equality would give those children greater rights by extending to them the protection that the Constitution gives to families 'based on marriage'.

The 'No' side went on to suggest that same-sex marriage would lead to increasing use of surrogacy. This ignores the fact that the majority of surrogacy cases so far have involved heterosexual couples and that proposed legislation on surrogacy would apply equally to all persons, whether gay or straight.

The opinion polls have so far shown a big majority in favour of a 'Yes' vote and overwhelmingly so among young people, but referenda can be unpredictable and turn-out is always lower among young people. There is no room for complacency about the vote, but commentators have noted that there has been a huge shift in attitudes towards the LGBT community in recent years as more gays and lesbians have felt able to come out to their families, friends and neighbours, who have in turn acquired a much greater understanding of diversity.

If the referendum is carried it will be a great stride towards a more tolerant and inclusive society in the Republic. And it will raise the question of how much longer can Northern Ireland hold out against equal treatment of its LGBT community compared with its neighbours in the Republic and the rest of the UK.

Michael Farrell, FLAC Senior Solicitor and former member of the Irish Human Rights Commission

Abortion Law Reform

The availability of safe, legal abortion and affordable, reliable birth contraception is really good for women. Being able to decide if and when to have a child (or more children) improves women's educational outcomes, our career prospects, our health, the health of our relationships, the well-being of our children, our lifetime earnings, and our sex lives. Women benefit tremendously from reproductive freedom, and so does society as a whole.

And so it was with caution that we welcomed the announcement from the Minister for Justice David Ford that after consultation, abortion law reform in the case of fatal foetal abnormality will proceed to the Executive for approval to bring forward legislation to the Assembly which would allow for termination of pregnancy in these tragic cases.

However, in 2013 the Department of Health in England and Wales noted that of the 802 women who travelled from Northern Ireland only 26 of those travelled at 20+ weeks; an indication that a fatal foetal abnormality had been diagnosed. This proposed legal change will therefore affect a tiny percentage of women who seek termination for varied and complex reasons when faced with a crisis pregnancy.

All the rumblings from Stormont since the Justice Minister's announcement at least indicate that the legislation will not be blocked by a petition of concern. Reported in the Newsletter on Wednesday 21st April, Peter Robinson has signalled that the party is unlikely to oppose the proposal. Indicating that his MLAs are likely to be given a free vote on the issue, the First Minister said that it would be "odd" for the party to propose a conscience clause bill but then deny its own members the right to exercise their conscience. Even in a free vote, the majority of DUP MLAs would be expected to oppose any change to abortion legislation, but some are believed to be supportive of Mr Ford's proposals.

Although abortion is legal in Northern Ireland in very restricted circumstances, the pathway into the National Health Service (NHS) is severely limited by the ongoing failure of Department of Health to publish final Termination of Pregnancy Guidance. This leaves health professionals with no clear guidelines on dealing with the issue of abortion. At the beginning of April, the Health department said that the abortion guidelines would be published within weeks. Minister of Health Jim Wells this week announced that it was the most 'difficult issue' he had to deal with and reported that whatever he published would likely trigger a judicial review.

What was missing from Minister Ford's announcement was the fact that what will not go forward for approval is abortion on the grounds of cases of sexual crimes (i.e. rape and incest). The recent Millward Brown Ulster public opinion poll carried out on behalf of Amnesty International NI clearly showed that people in NI were in favour of abortion, 60% on the grounds of foetal fatal abnormality, 68% in the case of incest and 69% on the grounds of rape. Repeated surveys have shown the majority of the population and medical professionals are supportive of a change in the law towards the U.K. 1967 Act and yet the politicians' continued inaction reflects their ignorance and disregard for Northern Irish opinion.

Indeed the Northern Ireland Human Rights Commission has issued legal proceedings in the High Court against the Department of Justice arguing that the existing law is, in the Commission's view, a violation of human rights. It is seeking a change in the law to allow abortion in cases of rape, incest or "serious malformation" of the foetus. The case will be heard in June 2015.

On average 1,000 women a year leave Northern Ireland to access their reproductive rights in the UK and beyond. It is time to end this discrimination and trust women to make the right decisions for them and their families.

Alliance for Choice again calls on Stormont to extend the 1967 Abortion Act to Northern Ireland and abortion legislation that meets International Human Rights Standards.

Kellie O'Dowd. Alliance for Choice

Seminar on the Equality implications of ‘Austerity’ following the Stormont House Agreement

On Monday 13 April in NICVA the Equality Coalition held an event to look at the likely equality impacts of implementing the provisions on welfare, public sector redundancies, restructuring and corporation tax contained within the Stormont House Agreement (or otherwise likely to be taken forward under direct rule).

Whilst the previous negotiations that led to the Haass-O’Sullivan Proposed Agreement focused on parades, flags and dealing with the past, the first section of the Stormont House Agreement (SHA) instead deals with issues of ‘welfare and finance’. The SHA and its financial annex, provide for significant changes to the economic and public sector model in place in Northern Ireland, including:

- A comprehensive programme of Public Sector Reform and Restructuring, including a significant reduction in the size of the public sector and an OECD independent strategic review of public sector reform;
- The related provision of up to £700m of capital borrowing from 2015-2019 to fund a voluntary exit scheme for an estimated 20,000 jobs in the public sector;
- Implementation of wide-reaching changes to the welfare state introduced in Great Britain under the Welfare Reform Act 2012;
- Devolution of powers over Corporation Tax with a view to lowering the rate in the north to 12%, which would require resourcing by further reductions in public spending or revenue raising.

Provisions of previous peace settlement agreements have expressed commitments to move away from past patterns of inequality, and to provide for equality and anti-poverty statutory duties. By contrast there is a real risk that the provisions of the SHA, which are clearly a part-implementation of the UK governments ‘austerity’ programme, carry significant risks in relation to exacerbating inequalities and disadvantage. To date, there has been no analysis we are aware of the risks that any such changes, unless carefully managed, may carry of stalling or even reversing trends of seeking to eliminate inequality between the two main communities, or any of the other section 75 categories and so this was the basis for setting up the seminar.

Daniel Holder, CAJ, co-convenor Equality Coalition gave an overview of the proposals in the SHA, including comparisons of reform and restructuring from Latin America that did not work. This is not something to be taken lightly in a post conflict society where historic and prevailing inequalities could destabilise the peace process. There were other presentations from Equality Coalition members including the Irish Congress of Trade Union/ Nevin Economic Research Institute who gave an austerity package overview. UNISON who presented on health cuts and Disability Action who detailed the ‘perfect storm’ of changes to welfare and cuts to public services that will have an adverse impact on disabled people.

The Participation and Practice of Rights Project (PPR) walked us through the grass roots/ community effects of the cuts and the impact on equality especially for Catholics on the housing waiting list in North Belfast. The Children’s Law Centre helped to link these decisions on budget cuts to section 75 of the NI Act 1998 and presented on the worrying proposal in the SHA to cut consultations from 12 weeks to 8 weeks. NICVA talked members through completed research and reminded the audience of the implications for this being a ‘precedent setting budget’.

The meeting addressed positive action for change, including complaining under the equality scheme, working together to make positive arguments on why government has obligations to deliver services and reminded government that cheaper is not better when tendering or contracting out services.

Overall, it seems there has been a distinct lack of collective responsibility taken on where the cuts have and will fall and the equality and human rights implications of this have not been analysed by those making the decisions. The Equality Coalition hope to inform a more detailed mapping exercise and potential partnership research project on the equality implications of the austerity following the Stormont House Agreement.

Upcoming Stormont House Agreement Conference Monday 18 May

Dealing with the Past in Northern Ireland: Implementing the Stormont House Agreement
Conor Lecture Theatre, Ulster University, York Street, Belfast

Official consultation on the detailed Westminster legislation planned to implement the December 2014 Stormont House Agreement is scheduled to take place this June. In advance of this the above conference has been organised by Amnesty International, the Committee on the Administration of Justice (CAJ), Institute of Conflict Transformation and Social Justice (QUB) and the Transitional Justice Institute (Ulster University), to discuss what, from a human rights perspective, should and should not be in the legislation to cover the establishment of the new institutions within the SHA namely:

- **The Historical Investigations Unit (HIU)** 'an independent body to take forward investigations into outstanding Troubles-related deaths'
- **An Independent Commission on Information Retrieval (ICIR)** 'to enable victims and survivors to seek and privately receive information about the deaths of their next of kin'
- **An Oral History Archive** 'to provide a central place to share experiences and narratives related to the Troubles'
- **An Implementation and Reconciliation Group** 'to oversee themes, archives, and information recovery'

This conference brings together expertise in academia, NGOs and other practitioners to discuss, examine and provide an independent perspective on the key elements of such legislation. It will include presentations of shadow legislation developed by members of an expert drafting group established as part of a collaborative QUB Business Alliance Project between CAJ and QUB School of Law, led by Professor Kieran McEvoy.

The opening plenary will include an opening from the University, a senior government spokesperson and Kate Allen, the director of Amnesty International UK.

A first panel-led discussion, chaired by Kate Allen will focus on the SHA's provisions for the HIU and Inquests. Speakers: Daniel Holder, CAJ; Patrick Corrigan, Amnesty and Fiona Doherty QC.

The second panel will cover the ICIR, chaired by Mary McCallan, Wave Trauma with Prof Louise Mallinder (TJI) and Prof Kieran McEvoy, QUB.

The Third panel discussion, chaired by Brian Gormally CAJ, will cover the Oral History archive and Implementation and Reconciliation Group, speakers: Dr Anna Bryson, QUB Research Fellow; Professor Brandon Hamber, INCORE/TJI; and Jeremy Hill, Visiting Scholar TJI, Member of the Drafting Group and former Legal Advisor to Eames Bradley. Each panel will be followed by questions and answers and discussion. The conference will close with reflections from Susan McKay, rapporteur for the day.

To book a place or for more information please contact Emma Patterson-Bennett in CAJ

Email: emma@caj.org.uk or Tel: 02890316000.



Civil Liberties Diary - March 2015

10 March

A report compiled by the Northern Ireland Assembly and Executive Review Committee has reported that it will take the Assembly 250 years to have equal numbers of male and female members at the current rate of change. The report suggested that the political parties should consider introducing measures to increase the participation of women in politics. The report recommended measures for political parties including attempts to increase the number of female election candidates, targeted membership strategies, mentoring programmes and ensuring greater visibility for female politicians.

Sinn Féin has voted on the welfare reform bill by lodging a petition of concern immediately before the bill became law. Failure to implement welfare reform, as delineated under terms of the deal agreed before Christmas, would shelve other parts of the agreement, including plans to devolve corporation tax and funding for 20,000 public sector redundancies. The SDLP also had withdrawn their support for the reform.

13 March

A report issued by the House of Lords and House of Commons Joint Committee on Human Rights found that the new Legacy Investigations Branch does not comply with European law. The Legacy Investigations Branch, established to replace the Historical Enquiries Team, cannot comply with ECHR Article 2 right to life protections as it is not independent from the police

service. It was previously revealed that more than half of the staff are former Special Branch or crime unit officers.

Under the terms of a proposal by the Office of the First Minister and Deputy First Minister, loyalist bonfire builders will be required to sign an insurance liability form before staging an Eleventh Night bonfire. The scheme would require an organiser to be named for each bonfire, in a similar manner to parade notifications to the Parades Commission. The scheme would offer financial incentives but would place requirements on the size of the bonfire, in collaboration with the fire service. Furthermore, the scheme would make the organiser liable for prosecution if the bonfire breaks the law regarding the burning of tyres or the display of sectarian symbols or paramilitary flags. If the form is not signed, the bonfire would be regarded as illegal, and community councils would be responsible for taking action.

16 March

A PSNI team tasked with investigating online child abuse has arrested 50 suspects in Northern Ireland in the past year. The arrests were linked to almost 70 search operations run by the Child Internet Protection Team. Evidence gathered by the specially-trained detectives has led to charges against 37 of the individuals.

17 March

The Police Ombudsman has been given new responsibilities to investigate serious complaints about the conduct of immigration and customs officers in Northern

Ireland. Complaints will also be accepted about police and some civilians employed by the PSNI, officials working for the Belfast International Airport, Larne Harbour and Belfast Harbour and the Ministry of Defence police. The Ombudsman will investigate serious matters, including deaths but excluding those which happened when immigrants were being detained or escorted by a home office contractor.

20 March

An inspection report conducted by the Criminal Justice Inspection (CJI) Northern Ireland reveals that a third of victims and witnesses were unhappy with the level of information they received about the ongoing case, whereas 25% complained about the scale of contact with criminal justice agencies. Even though there has been a considerable development, the report shows that a sizeable portion of victims and witnesses remains discontented with the criminal justice system.

Compiled by Elizabeth Super from various newspapers

Just News

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